hind the corporate veil of the respondent and identify the respondent with the race of its majority shareholders by whom it is controlled, so as to give it a native character because they have that character, or to make it a native because they are natives. On the law as it now stands, there is no way in which the respondent can acquire the status of a native, and being an artificial person, the respondent is not, and can never be, a native within the meaning of the Land Code read in conjunction with the Interpretation Ordinance.

With the conclusion arrived at above, I now come to the question whether the respondent is authorised by the Yang di-Pertua Negeri in Council to acquire or deal with the said land, or the interest therein, under section 9(1)(d) of the Land Code. My answer to this is simply in the negative, there being no evidence whatsoever before the Court to show that such authorisation has been given.

In the event, I hold that the two documents, namely: the agreement and the trust deed above referred to, are illegal as being made in contravention of the provisions of section 8 of the Land Code, in that they relate to a dealing which is prohibited by law, and are, therefore, void and unenforceable. Consequently, the respondent can have no valid claim to an interest in the said land under or by virtue of the said two documents or either of them, such as would entitle it to maintain the caveat lodged by it against the said land.

For the reasons which I have stated above, I would allow this application and accordingly make the order as prayed in the notice of originating motion with costs in favour of the applicant.

Application allowed.

Solicitors: *Loke, King & Co.; Ee & Lim.*

MILLION GROUP CREDIT SDN. BHD. v. LEE SHOO KHOON & ORS.

[O.C.J. (Shankar J.) December 29, 1984]

[Johor Bahru – Originating Summons No. 758 of 1984]

Land Law – Caveat – Ex parte application for extension of private caveat.

Contract – Draft agreement for sale and purchase of land – Draft duly signed by appellant and forwarded together with 10% deposit of purchase price to the respondents – Respondents declined to sign the Agreement and returned the deposit – Effect of.

Conveyancing – Agreement for sale and purchase of land – 10% deposit of purchase price – Dispute as to provisions of agreement – Caveat – Application for extension of private caveat – Caveator had no interest in land – Court ordering removal of caveat.

Legal Profession – Practice and Etiquette – Legal Profession (Practice and Etiquette) Rules 1978, r. 28.

In this case the respondents through their solicitor offered to sell the land in question on certain terms. The applicant made a counter-offer to purchase the said property on certain terms and the counter-offer was addressed to the respondents' solicitor. The terms of the agreement were discussed and it was agreed that one of the clauses in the written Sales Agreement should be deleted. The draft agreement was then engrossed and the applicant's solicitor forwarded six copies of the draft to the solicitor of the respondents with a request that the same be executed. The agreement by then had been signed by the applicant and the covering letter enclosing the engrossed copies of the agreement was accompanied with a cheque for 10% of the purchase price. The said covering letter stipulated that the cheque was not to be released to the respondents unless they have signed the agreement of sale and the memorandum of transfer, and deposited the title deed with the respondents' solicitor.

Three months later the respondents' solicitor advised the applicant's solicitor that his clients were unable to agree on certain terms and conditions contained in the written agreement and consequently the applicant's cheque for 10% of the purchase price was returned uncashed. Arising from this the applicant filed a caveat against the land. Some seven months later the respondents filed a notice addressed to the applicant to show cause why the caveat should not be removed. In response to this notice the applicant filed an *ex parte* application for the extension of the private caveat.

Held, dismissing the application: (1) a mere chose in action arising out of or incidental to a contract for the sale of land could not entitle the claimant to lodge a caveat to freeze the land until his action had been heard. He must have "an interest in the land";

(2) merely because the respondents' solicitor agreed to a deletion of one clause in a draft did not entitle the applicant's solicitor to say that by doing so he must be taken, on behalf of his clients, to have agreed to all the terms in the contract so that the execution of the document became a mere formality;

(3) this was not a case where the caveator had satisfied the court on the evidence presented that he had a claim to an interest in the land or that such a claim raised a serious question to be tried;

(4) in the circumstances of the case this was not a proper case for the extension of the caveat and it should therefore be removed.

Obiter: The practice of solicitors themselves filing contentious affidavits in pending applications should be discouraged. The parties are the litigants and it is they who should be giving evidence. The rules relating to con-

duct and etiquette in the profession quite clearly say that a solicitor should not appear as such in a matter in which he has reason to believe that he will be a witness in respect of a material and disputed question of fact.

Cases referred to:

(1) *Spottiswoode, Ballantyne & Co. Ltd.* v. *Doreen Appliances Ltd.* [1942] 2 All E.R. 65.
(2) *Eng Mee Yong & Ors.* v. *V. Letchumanan* [1979] 2 M.L.J. 212.

ORIGINATING SUMMONS.

W. K. Teng for the applicant.
R. K. Menon for the respondents.

Cur. Adv. Vult.

Shankar J.: This is an *ex parte* application for the extension of a private caveat which has been lodged by the applicant against the land of the respondents (the said land).

On December 19, 1983 the respondents through their solicitor made an offer to sell the said land on certain terms. On December 21, 1983 the applicant through their solicitor made a counter-offer to purchase the said property on certain terms. This counter-offer was addressed to the respondents' solicitor. The terms were the subject of a conversation in the course of which the solicitors agreed that one of the clauses in the written Sales Agreement should be deleted. The applicant's solicitors then engrossed the draft agreement and forwarded six copies thereof to the respondents' solicitor with the request that the same be executed by the respondents. The agreement by then had been signed by the applicant and the covering letter enclosing the engrossed copies of the agreement was accompanied with a cheque for 10% of the purchase price.

The applicant's solicitor stipulated in his covering letter that this cheque was not to be released to the respondents unless they have signed the agreement of sale, signed the memorandum of transfer, and deposited the title deed with the respondents' solicitor. This covering letter is dated December 21, 1983. Thereafter nothing happened until March 21, 1984. On that day the respondents' solicitor wrote to the applicant's solicitor stating that his clients were unable to agree on certain terms and conditions contained in the written agreement and consequently the applicant's cheque for 10% was returned to the applicant's solicitor uncashed.

The view taken by the applicant and their solicitor was that on the above facts they had a claim to the land and on some date not disclosed to the Court the applicant filed a caveat against the land. The grounds of their claim to the land were:

"(a) On or about December 21, 1983 the Landowners agreed to sell and we agreed to purchase all the said land described in the scheduled at the purchase price of $1,359,000.00.

(b) Accordingly our solicitors, Messrs. Lim & Teng forwarded the Agreement of sale and our payment of $135,900.00 being 10% of the purchase price to Messrs. R.K. Menon, Johore Bahru, Solicitors for the Landowners.

(c) The Landowners have now refused to sell the said land to us."

The photocopy of the caveat attached to the supporting affidavit is undated and the statutory declaration is also undated but I assume that the application filed in the Land Office had the dates entered thereon. Thereafter on October 30, 1984 the respondents through their solicitor filed a notice addressed to the applicant to show cause why the caveat should not be removed. It is in response to this notice that the applicant has filed the present application.

Before I heard this application I drew the attention of the applicant's counsel to the following authorities:– 1. *Williams* on Titles – 4th Edition page 20 and 2. *Megarry* on Law of Real Property – 3rd Edition page 552. After hearing the submission of applicant's counsel on the law and the facts I dismissed this application. I said that I would give my reasons later and I do so now.

A mere chose in action arising out of or incidental to a contract for the sale of land cannot, in my view, entitle the claimant to lodge a caveat willy nilly to freeze land until his action has been heard. He has to have something more. That something is "an interest in land." This expression has been the subject of considerable judicial discussion. See *David Wong*, "Tenure and Land Dealings in the Malay States" pp. 415 – 417 and *Wong Kim Fatt*, "Private Caveats" pp. 12 – 18.

So far as the facts of this case are concerned, it appears to me that there was never any concluded contract between the parties. Negotiations there were, but the only proper inference that I can draw in the circumstances of this case is that by submitting a formal agreement to the respondents' solicitor which the applicant's solicitor required to be

executed this proposed sale was clearly subject to contract. The meaning of these words were spelt out by Lord Greene MR. in *Spottiswoode, Ballantyne & Co. Ltd.* v. *Doreen Appliances, Ltd.*[1]:

"... the language here is equivalent to the common and more concise phrase "subject to contract," and, if anything is settled, it is that that phrase is one which makes it clear that the intention of the parties is that neither of them is to be contractually bound until a contract is signed in the usual way."

Merely because the respondents' solicitor agreed to a deletion of one clause in a draft does not, in my view, entitle the applicant's solicitor to say that by doing so he must be taken, on behalf of his clients, to have agreed to all the terms in the contract so that the execution of the document became a mere formality.

There is no evidence whatsoever before me that the respondents had an opportunity of considering all the terms in the final sale agreement before that document was put to each of them for execution.

Consequently it seems to me that this is not a case where the caveator has satisfied me on the evidence presented to this Court that he has a claim to an interest in the land, or that such a claim raised a serious question to be tried, let alone going on to show that on the balance of convenience it would be better to maintain the *status quo* until the trial of the action which the applicant filed on November 29, 1984. (See *Eng Mee Yong & Ors.* v. *Letchumanan*[2].)

In all the circumstances it is clear to me beyond a peradventure that this is not a proper case for the extension of the caveat and it should therefore be removed.

Before leaving this matter there are two other points which I think it pertinent to make. In these modern days of swift communication, *ex parte* applications should be the exception rather than the rule. There was really no reason why the applicant here should not have given notice of his Originating Summons to the respondents' solicitor. If this had been done the Court should have had a benefit of the views of the respondents' solicitor, it being a matter in which they had a real interest.

A second point which needs to be emphasized is that the practice of solicitors themselves filing contentious affidavits in pending applications should be discouraged. The parties are the litigants and it is they who should be giving evidence. The rules relating to conduct and etiquette in the profession quite clearly say that a solicitor should not appear as such in a matter in which he has reason to believe that he will be a witness in respect of a material and disputed question of fact (see Rule 28 of the Legal Profession (Practice and Etiquette) Rules 1978).

Since this is an *ex parte* application there will be no order as to costs.

Order accordingly.

Solicitors: *Lim & Teng; R.K. Menon & Co.*

OH PHAIK LIN & ORS. v. CHOONG LYE HOCK ESTATE SDN. BHD. & ORS.

[O.C.J. (Edgar Joseph Jr. J.) February 9 & March 1, 1985]

[Penang – Civil Suit No. 315 of 1983]

Probate and Administration – Beneficiaries in conflict – Protecting assets of Estate – Mismanagement – Fraud – Partnership – Contempt of court – Serious questions to be tried – Balance of convenience – Defence of laches and acquiescence – Appointment of receivers and managers.

In this case, the plaintiffs applied by Summons-in-Chambers for the appointment of two interim receivers and managers arising out of a suit involving members of a family who had fallen out. It also involved a company in which they had no interest. The case started on January 4, 1943 when one Chuah Bah Say ("C.B.S.") entered into a written agreement ("the Agreement") with the 1st defendant ("D1"). Under the Agreement C.B.S. was, *inter alia*, to manage and collect rents and profits from various lands known as Otaheite Estate (later called Ayer Itam Estate). He could, with written consent of D1, sell parts of that Estate and proceeds of sales were to be paid to D1. The proceeds of sales and revenue from the lands were to be apportioned as to ¾ thereof to C.B.S. and ¼ to D1 and likewise for all losses. C.B.S. died intestate on November 9, 1949, survived by his widow and three daughters, *viz.* Chor Saw Oon the 2nd plaintiff ("P2"), and Chor Phaik Gnor the 2nd defendant ("D2"), and Chor Phaik Har the 3rd defendant ("D3"). C.B.S. also left his ¾ shares in the said lands alleged to be worth some $90 million From November 10, 1949 until September 10, 1965, D1 solely and later with D2 continued managing the lands. It was alleged that during the period November 10, 1949 to mid 1968, about 15 subdivided pieces of the land were sold at prices below market value by D1 without the prior sanction of the Court. By order of Court dated July 12, 1968 in Penang High Court Civil Suit No. 64/68, the Estate of C.B.S. was placed under court administration. It was alleged there were actions without court sanctions.